

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Children's Television Obligations	)	MM Docket No. 00-167
Of Digital Television Broadcasters	)	
	)	
	)	

**COMMENTS OF TIME WARNER INC.  
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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Dated: April 1, 2005

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IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

Time Warner Inc. ("Time Warner"), by its attorneys, submits these comments in response to the Commission's Further Notice of Proposed Rule Making ("*FNPRM*") in the above-captioned proceeding.<sup>1</sup> Time Warner, through its divisions, is involved in the production of motion picture, broadcast television, and MVPD content, the packaging of broadcast and MVPD television programming networks, the retail distribution of cable programming to subscribers, and is the world's leader in interactive services.<sup>2</sup>

The Commission initiated this proceeding in 2000 to address the obligation of television broadcast licensees to provide educational and informational programming for

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<sup>1</sup> *In the Matter of Children's Television Obligations of Digital Television Broadcasters, Further Notice of Proposed Rule Making*, FCC 04-221, MM Docket No. 00-167 (rel. Nov. 23, 2004); 70 Fed. Reg. 63 (Jan. 3, 2005).

<sup>2</sup> Time Warner's motion picture and television production studio assets include Warner Bros. Pictures, Warner Bros. Television, New Line Cinema, and Castle Rock Entertainment. The company's programming networks include Home Box Office and Cinemax, as well as CNN, TNT, TBS, Cartoon Network, and other Turner Broadcasting System cable networks, and the WB Network. Time Warner Cable provides service to approximately 11 million subscribers nationwide. Time Warner's wholly-owned subsidiary America Online, Inc., is the world's leader in interactive services, web brands, Internet technologies and e-commerce services.

children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages.<sup>3</sup> One of the questions raised in the *FNPRM* was the issue of direct, interactive links in children's programming. The Commission concluded that taking any action would be premature and could hamper the ability of broadcasters to experiment with potential uses of interactive capability in children's programming:

With respect to the appearance of direct, interactive, links to commercial Internet sites in children's programming, we agree with those commenters that express concern that prohibiting such links at least at this stage in the digital transition is premature and unnecessary and could hamper the ability of broadcasters to experiment with potential uses of interactive capability in children's programming. There is little if any use of direct Internet connectivity today in television programming of the type that was contemplated when the *Notice* in this proceeding was issued. Accordingly, we find that it would be premature and unduly speculative to attempt to regulate such direct connectivity at this time. We agree that direct links to websites with program-related material could provide beneficial educational and informational content in children's programs and do not wish to place unnecessary barriers in the way of technical developments in this area that may take place.<sup>4</sup>

Despite this recognition, the *FNPRM* tentatively concludes that the Commission "should prohibit interactivity during children's programming that connects viewers to commercial matter unless parents 'opt in' to such services."<sup>5</sup> The *FNPRM* then solicits comments on how this tentative solution could be implemented technologically. It

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<sup>3</sup> See *In the Matter of Children's Television Obligations of Digital Television Broadcasters, Notice Of Proposed Rule Making*, FCC 00-344, MM Docket No. 00-167 (rel. Oct. 5, 2000) ("*Notice*").

<sup>4</sup> *FNPRM* at ¶ 53.

<sup>5</sup> *Id.* at ¶ 72.

further asks how to apply commercial time limits in the interactive context and whether to modify the definition of “commercial” in this context.<sup>6</sup>

Time Warner is firmly committed to providing the best in children’s content services, whether the medium be video programming or online content. Time Warner has demonstrated that commitment through its educational and informative online and offline offerings, and the provision of various parental controls and content disclosures that help parents guide their media experiences. While Time Warner will continue to offer quality content for children – and the tools for parents to ensure children safely enjoy these offerings – regulatory intervention to limit or bar “direct links” from children’s television programming to Internet-based content could stifle the development of such interactive services.

Given the undefined status of this technology, the Commission’s inquiry and its tentative conclusion are premature. The Commission was correct in its initial determination that it is too soon to formulate rules for an interactive functionality that does not yet exist. Having found that interactive television is not yet fully realized, and despite expressing its desire not to create technological roadblocks, the Commission inappropriately attempts to craft an opt-in solution in the absence of a means for implementing it. It is altogether too soon to regulate this nascent technology and we urge the Commission to defer imposing any requirements. Time Warner believes that the Internet and the potential it provides for interactivity with television can and will provide valuable educational, informational, and entertainment experiences for children. How this potential will be realized remains unclear.

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<sup>6</sup> *Id.*

When Congress has acted in this field, it has historically taken a measured and balanced approach. For example, the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. § 6501 *et. seq.*, imposes certain requirements on operators of websites or online services directed at children under 13 years old which collect personal information from those children. Specifically, the statute and regulations require website operators to make “reasonable efforts to obtain verifiable parental consent, taking into consideration available technology.”<sup>7</sup> Moreover, in implementing COPPA, the Federal Trade Commission (“FTC”) eschewed a single solution and instead implemented a sliding scale approach to obtaining parental consent.<sup>8</sup> The Commission’s attempt here to regulate television interactivity and impose an opt-in solution where the technology does not yet exist would freeze innovation and run counter to the flexible approach historically taken by Congress and the FTC.<sup>9</sup>

The *FNPRM* also inquires whether the Commission’s new children’s website rules applicable to cable operators should also apply to Direct Broadcast Satellite

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<sup>7</sup> 15 U.S.C. § 6501(a); 16 C.F.R. § 312.5(b).

<sup>8</sup> 16 C.F.R. § 312.5(b)(1). The FTC initially implemented this approach for a specified period of time and is now proposing to make this flexible approach permanent. *See Children’s Online Privacy Protection Rule, Notice of Proposed Rulemaking and Request for Comment*, 70 Fed. Reg. 2580 (daily ed. Jan. 14, 2005). Indeed, the FTC’s regulations are detailed and include specific exceptions where prior parental consent is not required. Further, the COPPA regulations were enacted only after specific proposals were made and publicly vetted in workshops to solicit industry comment.

<sup>9</sup> If, at some point in the future, the FCC ultimately determines that regulations on interactivity are appropriate, and requires an opt-in mechanism, substantial implementation lead time should be allowed for industry to develop and rollout compliant technology.

(“DBS”) service providers.<sup>10</sup> The Commission tentatively concluded that they should be extended to DBS:

We believe that it is appropriate to require that children in DBS households receive the same protection from excessive commercialism on television as children in cable or over-the-air television households.<sup>11</sup>

We support the Commission’s conclusion and urge that when its children’s website rules – either in their current form or as they may be amended on reconsideration – come into effect on January 1, 2006, they also apply to DBS providers. This regulatory parity is necessary to ensure that children’s programming networks that may be developed or launched initially on DBS platforms are on equal footing with their counterparts launched on cable. In the absence of such parity, an imbalance would result that would skew economic incentives and program development. Further, the 20 million television households that subscribe to DBS already receive programming that also reaches millions of cable homes – programming that would be subject to less-stringent standards on the DBS platform if the Commission did not extend the applicability of its rules. This possibility would make compliance and its costs much more difficult for programmers.

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<sup>10</sup> *FNPRM* at ¶ 73.

<sup>11</sup> *Id.*

Administrative and constitutional law, as well as the basic principle of equity, weighs heavily in favor of including the DBS providers within the Commission's children's website regulations.

Respectfully submitted,



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